

MEMBERS' FORUM ON LAND TITLES BILL

Revision to the Land Titles Bill: A new approach to conversion

Notes prepared by The Land Registrar

The Government will introduce Committee Stage Amendments to the Land Titles Bill that will replace the previously proposed gradual conversion mechanism under which certificates of good title would have had to have been issued by solicitors.

2. Under the new mechanism for bringing property under the title registration system there will be no voluntary applications for conversion and no compulsory applications at the time of sale of a property. Instead:

- A All new land (defined as land for which new government leases are issued after auctions or tenders or private treaty grants after the commencement of the bill) will come directly under the title registration system; and
- B With two exceptions, all existing properties will be deemed to be brought under the title registration system at the end of an interim period (which is proposed to be 12 years, but with a review mechanism to reduce or lengthen the period). The exceptions are:-
 - (i) Where an instrument has been submitted for registration before the end of the interim period but registration has not yet been completed. Conversion in these cases will be deferred until the registration is completed or the instrument is withdrawn; and
 - (ii) Where a 'caution against conversion' has been registered and is still valid. Conversion in these cases will be deferred until the caution is withdrawn or removed.

3. Prior to conversion, all existing properties will remain under the terms of the Land Registration Ordinance. The Land Titles Bill will introduce a number of amendments to the Land Registration Ordinance that will have effect from the commencement of the interim period noted above. These are:-

- A Provision for the registration of ‘cautions against conversion’ as noted in para. 2 B (ii) above; and
- B Provision for protection of unregistrable interests by means of the registration of notices of claims (to be called ‘caveats’).

Cautions against conversion ("CAC")

4. The concept for these cautions is to allow a person who intends to take action to assert a claim that he has title to or a beneficial interest in any particular land to keep the property under the old deeds registration system until the claim is settled.

5. A caution against conversion will be valid for only one year from its date of registration unless the cautioner acts within that period. The actions that the cautioner may take are:-

- (i) To withdraw the caution; or
- (ii) To apply to the court for an extension of the caution (e.g on the grounds that more time is required to prepare his action). The courts may grant such extension or extensions as they think fit but the total length of any such extension(s) may be no more than 12 months; or
- (iii) To commence an action and register the *lis pendens* relating to it. The caution will then remain valid until the *lis pendens* is vacated or discharged.

6. An owner whose property has been made subject to a CAC will be able to apply to the Registrar or to the Court for the removal of the CAC. The Registrar may only act to remove a CAC where the applicant for removal has given notice to the cautioner and satisfactory evidence provided that the CAC was either wrongfully registered or that the grounds on which it was registered no longer exist. The Court of First Instance will have wide powers of removal and may consider applications for removal by any person with an interest in the land rather than just the owner. Where there is a pending court action, the parties may apply for an order for removal in the same action.

7. A CAC will constitute notice of the claim which is the subject of the caution. It does not establish the validity of the claim, nor does it confer any priority. Priority of the claim, if established, will follow from the registration of the *lis pendens* registered in respect of the claim.

8. A cautioner who registers or maintains a CAC without reasonable cause will be liable in an action for damages.

Caveats

9. A CAC is a 'hostile' action taken by a claimant to an interest in land to prevent a property being brought onto the title register before the claim is determined. The idea behind the caveat is to provide a simple means for a person to give notice of a claimed interest that at present is unregistrable so as to safeguard their position against a purchaser for value under the title registration system. Under the new system a purchaser for value will take free of any interest that is not the subject of an entry in the register or not defined as an 'overriding interest' under the Bill.

10. The subject matter of a CAC may be a claim for *title or beneficial interest to land*. But the subject matter of a caveat is restricted to a claim arising from an '*unregistrable interest*'. This defined as any interest or equity in or affecting land which has been created by operation of law and is not otherwise capable of being registered under the Land Registration Ordinance.

11. Once a property is brought under the title registration system, a claimant will be able to protect his or her claim by application for a non-consent caution. The proposed system for caveats is to create a similar mechanism under the Land Registration Ordinance so that notice may be given in advance of the conversion date. This caveat may be carried forward upon the conversion of the land from the old system to the title registration system, and will be deemed to have effect as a non-consent caution with registration priority relating back to its effective date under the LRO.

12. From the commencement date of the Bill (which will also be the beginning of the interim period) a claimant to an interest in land that is not at present registerable under the Land Registration Ordinance will be able to apply for registration of a caveat using a specified form.

13. Like registration of a *lis pendens*, a caveat which is registered will have priority from the day after its registration, i.e. the 'one day rule' will apply.

14. Registration of the caveat will not prevent the subsequent registration of any instrument or judgement affecting the land, nor will it prevent the property being brought under the title registration system at the end of the interim period.

15. The registered caveat will constitute notice of the claim to anyone dealing in the land subsequent to the date of registration. It does not affect the validity of the claim, validate any rights or constitute a warranty of the validity of the claim by the Land Registry or Government. Nor does it abrogate or diminish the operation of the equitable doctrine of notice as long as the land remains under the present deeds registration system. Before a property is converted to be registered land, a person dealing with it will not only be subject to an unregistrable interest that is the subject of a caveat on the register. He will also be subject to any other unregistrable interests of which he is proved to have actual, imputed or constructive notice.

16. Caveats may be withdrawn or removed through any of the means described in paragraph 6 above for withdrawal or removal of a CAC. Similarly, a person who has registered or maintains a caveat wrongfully and without reasonable cause will be open to claims of damages.

17. Any caveat that has not been withdrawn or removed before the property to which it relates is brought under the title registration system, will be deemed to be a non-consent caution and will be so entered on the title register for the property.

On and After Conversion

18. At the end of the interim period all existing properties, with the exceptions noted in paragraph 2 B (i) & (ii), will be converted automatically to the title registration system. The registers maintained under the Land Registration Ordinance will be deemed to be title registers under the Land Titles Ordinance. The last owner on the current register kept by the Land Registry under the LRO will become the first registered owner of the Title Register opened under the LTB. Under Cl.18 of the Land Titles Bill, the Registrar will have the power to close a title register and open a new edition showing only those matters that are current at the time of opening the new edition. This power may be exercised at the time that a property is brought under the title registration system.

19. The format of the registers maintained under the Land Registration Ordinance and the planned format of the title registers are being developed to ensure minimal change at the conversion. A draft form of title register marked "ANNEX-1" is annexed to illustrate how it is currently proposed that various matters will appear on the title register.

20. As soon as a property has come onto the title register it is governed by the provisions of the Land Titles Bill.

21. A person who has a claim to an interest in property may apply for registration of a non-consent caution at any time, irrespective of when the claimed interest was created. For example, a claim that arises from a cause occurring before the end of the interim period may be the subject of a non-consent caution entered after the end of the interim period when the property has come under the title registration system. The claimant does not have to have registered a caveat before the end of the interim period in order to protect his claim after conversion.

22. The key change is that, from the date at which a property comes under the Land Titles Ordinance, a subsequent purchaser for value will not be affected by a claim arising from any interest unless it is an overriding interest or is the subject of an entry in the register. An entry may be made by way a non-consent caution (including a caveat that has been deemed to be a non-consent caution upon bringing of the property onto the title register). If the claim does not arise under an overriding interest and no notice of a claim has been given by a caution, the purchaser for value will take the property free of any such claim.

3 May 2004

REGISTER with a caveat

Under Land Registration Ordinance and before automatic conversion of the land to the title registration system

Owners Particulars

Name of Owner	Capacity (if not sole owner)	Memorial No.	Date of Instrument	Date of Registration	Consideration
ABC Development Ltd.	--	0000000	00.00.1988	00.00.1988	--
SZETO Man Lung	--	0000000	23.11.1990 Remarks: Assignment	15.12.1990	\$800,000.00

Incumbrances

Memorial No.	Date of Instrument	Date of Registration	Nature	In Favour Of	Consideration
0000000	00.00.0000	00.00.0000	Occupation Permit	--	--
2222222	00.00.0000	00.00.0000	Deed of Mutual Covenants	--	--
8888888	10.12.2000	03.01.2001	Legal Charge	FGH Bank Remarks: The consideration is all money	

Deeds Pending Registration

- None -

Caveat / Caution against Conversion

Memorial No.	Date of Registration	Nature of Dealing / Claim	Supporting Document	Name of Party	Consideration	Remarks
1234567	00.00.2006	Claim for beneficial interest	Caveat under s.00 of LRO	Lee Kar Yee ¹	--	

¹ Wife of SZETO Man Lung who claims to have made contribution to the purchase price [This note is not part of the register. Just to illustrate the relationship between the registered owner and the caveator.]

TITLE REGISTER with former caveat now deemed to be non-consent caution

After automatic conversion of the land to the title registration system.

Owners Particulars

Name of Owner	Capacity (if not sole owner)	Nature of dealing	Application No.	Date of Registration	Consideration	Remarks
SZETO Man Lung	--	Assignment dated 23.11.1990	--	15.12.1990	\$800,000.00	Memorial No.0000000 under LRO

*Caveat as per Memorial No.1234567
[Deemed to be effective as non-consent
caution by virtue of ss.00 of LTB]*

Incumbrances

Application No.	Date of Registration	Nature of Dealing / Claim	Supporting Document	Name of Party	Consideration	Remarks
	00.00.0000	Occupation Permit	Occupation Permit	--	--	Memorial No.0000000 under LRO
--	00.00.0000	Deed of Mutual Covenants	Deed of Mutual Covenants dated 00.00.0000	--	--	Memorial No.2222222 under LRO
--	03.01.2001	Charge	Legal Charge dated 10.12.2000	FGH Bank	All money	Memorial No.8888888 under LRO
--	00.00.2006	<i>Beneficial interest</i>	<i>Caveat under s.00 of LRO</i>	<i>Lee Kar Yee</i>	--	<i>Memorial No.1234567 under LRO</i>
<i>LRE0000000</i>	<i>00.00.2007</i>	<i>Non-consent caution</i>	<i>Originating Summons under HCA0000/00 (for removal of caveat)</i>	<i>Plaintiff: SZETO Man Lung</i>	--	--
<i>LRE0000000</i>	<i>00.00.2007</i>	<i>Full delegation of power</i>	<i>S.7 Power of Attorney dated 00.00.2007</i>	<i>Defendant: Lee Kar Yee</i> <i>Donor: SZETO Man Lung</i> <i>Donee: SZETO Lap Tak²</i>	--	--

Applications Pending Registration

- None -

² Father of SZETO Man Lung [This note is not part of the register. Just to illustrate the relationship of the donor and the donee under the Power of Attorney.]